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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 358

INTERSTATE TRANSIT, INC., APPELLANT,

vs.

DICK LINDSEY, COUNTY COURT CLERK

APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

FILED AUGUST 18, 1930

(35,280)

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[fols. 1 & 2] [Caption omitted]

[fol. 3] In Chancery Court of Davidson County, Part One

Rule No. 40910

Interstate Transit, Inc., a Corporation Organized and Existing under the Laws of Ohio, Complainant,

versus

Dick Lindsey, County Court Clerk of Davidson County, Tennessee, Defendant

Bill of Complaint

To the Honorable R. B. C. Howell, Chancellor, holding Part I of the Chancery Court at Nashville, Tennessee:

Complainant would respectfully show to the Court:

I

That it is a corporation, organized and existing under the laws of the State of Ohio, with its home or principal [fol. 4] place of business located in the City of Cincinnati, Ohio. Among other things, its charter authorizes the operation for hire of busses; the transportation of passengers interstate, and to otherwise carry on and operate motor busses as a common carrier for hire as an interstate business.

A copy of said charter is herewith exhibited, marked Exhibit No. 1, and made a part of this bill, but same need not be copied. The original will be filed on or before the hearing.

Complainant is now, and has for some time, engaged in the business of transporting passengers for hire between the States. It now operates, in addition to other lines, an interstate bus line between Cincinnati, Ohio and Atlanta, Ga. In operating its busses on said route, it traverses the highways of Ohio, Kentucky, Tennessee and Georgia.

II

That the defendant Dick Lindsey is the regularly constituted, elected and acting County Court Clerk of Davidson County, Tennessee. He is now acting in such capacity, and has so acted for several years prior to the filing of this bill.

[fol. 5]

III

Complainant, in pursuance of and under its charter powers, and in the exercise of rights guaranteed under the constitution of the United States, established a route between Cincinnati, Ohio, and Atlanta, Ga., through Nashville, Tennessee, over the highways traversing the States of Ohio, Kentucky, Tennessee and Georgia, and is now transporting passengers for hire by motor bus between these points. Said highways traversed over said route in Tennessee and other states are constructed jointly by the Federal government and the several states through which said route passes.

Complainant is engaged exclusively in the transportation of passengers interstate and not intra-state. No passenger is received in Tennessee for transportation by complainant in Tennessee, but all passengers transported by complainant are discharged in a state other than the state in which such passengers embark. The route traversed by complainant in the operation of its line is interstate, and it carries passengers exclusively interstate.

IV

Complainant has expended thousands of dollars in the purchase of equipment with which to operate said interstate route and is now using such equipment therein. Large [fol. 6] numbers of persons have been employed, and are now engaged in the furtherance of such interstate business.

V

Chapter 89 of the Public Acts of Tennessee for the year 1927 (Revenue Bill), provides as follows:

Section 4 (page 284 published volume) provides

"That each vocation, occupation, and business hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privilege shall be as herein-

after fixed, which privilege tax shall be paid to the County Court Clerk as provided by the law for the collection of such revenue."

At pages 290 and 291, published volume, of said Act, it is provided as follows:

"Automobile Busses, Including Busses Operating Into and/or Through Other Counties

(State and Privilege Tax Only)

For each automobile bus operating and carrying passengers on regular or fixed routes from one point in this State, to another point in this State, for which charge is made, in such county, in and from which it operates, there [fol. 7] shall be paid to the County Court Clerk, in such County in, and from which it operates, or claims as its situs, the tax hereafter fixed, and said tax so paid shall be in lieu of all county and municipal privilege taxes for such operation therein. The levy of any such privilege tax by any County or Municipality on such busses is hereby prohibited.

The privilege tax hereby levied on such busses is as follows:

Each bus carrying 18 passengers and less than 30 passengers, per annum $500.00.

Provided, that the privilege tax accruing under this heading shall go to and belong exclusively to the General Fund of the State.

Provided, further, that where any automobile busses operate over one half of their mileage or more over a county maintained road, that one-half of the above tax shall be retained by the county for county road purposes.

Automobile Busses Operating Exclusively in One County

Each person, firm or corporation operating an automo- [fol. 8] bile bus and carrying passengers from one point in one county to another point in the same county on regular or fixed routes, shall pay the county court clerk in such county the following privilege tax:

Each bus carrying 20 passengers and less than 30 passengers, per annum $500.00.

Provided that this tax shall be in lieu of all county and municipal tax, except where said automobile busses operate on county highways, maintained by the county over a majority of the mileage, one half of said tax shall be retained by the county for road purposes.

Provided, further, that this section shall not apply to persons, firms, or corporations who operate a car of not more than 5 passenger seating capacity on a route outside a city or town not exceeding five miles, nor persons, firms or corporations making not over two round trips per day, with a car of not over 5 seating capacity.

Provided, further, that the state privilege tax accruing under this heading shall go and belong exclusively to the General fund.

[fol. 9] Automobile busses operating upon the highways of this State and running into other states, not liable under the foregoing provisions.

State Privilege Tax Only

Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provisions, shall pay as follows:

Each bus carrying over 20 passengers and less than 30 passengers, per annum $500.00.

Provided, that this tax shall be in lieu of all county and municipal taxes; provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State.

VI

Complainant, on the — day of March, 1929, and less than 30 days prior to the filing of this bill, applied to the defendant County Court Clerk of Davidson County, Tennessee, for the issuance of license tags to attach to its busses to be used [fol. 10] in its interstate business in Tennessee.

However, defendant refused and declined to issue to complainant license tags for its busses unless it had paid a privilege tax assessed against each bus used in Tennessee by complainant, and further threatened to arrest the

operators of its busses used in Tennessee unless and until such tax was paid.

Defendant further threatened to attach such busses used in Tennessee unless such a tax was paid.

VII

Complainant avers that it is not liable for a privilege tax on its busses used in its interstate business in Tennessee, and that no such tax is levied on complainant under the terms of said Chapter 89, Acts of 1927 (Revenue Bill, pages 290-291 printed volume), and that if such a tax is levied on complainant by such act, same is null and void, being in contravention of the commerce clause of the Federal Constitution, being Article I, Section 8, Clause 3 thereof.

However, complainant was offered the alternative of paying a privilege tax on eight busses it proposed to use in its business in Tennessee, amounting to Four Thousand ($4,000.00) Dollars per annum, or $1,000 per quarter, plus [fol. 11] a clerk's fee of $1.50 per bus, or refrain from carrying on its lawful business until such time as its liability for such a tax could be determined by the courts of Tennessee, or to operate in Tennessee without license tags and subject its properties to attachment by the County Court Clerk and its operators to frequent arrests and interference by state officers.

Complainant had already purchased its busses for its operations in Tennessee and had contracted with certain persons to carry on said business, and to await a judicial determination of its liability for said privilege tax would have required its equipment and its employes to remain idle, which would have resulted in serious and permanent loss to your complainant.

Complainant, by reason of the matters and things hereinbefore averred, paid a privilege tax on eight 29-passenger Mack busses, for one-quarter of a year, in the sum of $126.50 each, amounting to One Thousand and Twelve ($1,012) Dollars. Said privilege taxes were paid under protest, by reason of the aforesaid coercion and duress on the part of the defendant. This suit is instituted to recover such sum.

[fol. 12] VIII

Under said Revenue Bill for the year 1927 there are three classes of bus operations that are made privileged

occupations, and complainant does not come within the provisions of the Act.

Class No. 1 (page 290, top of page, published volume) includes each bus operating and carrying passengers on regular or fixed routes from one point in this state to another point in this state. The taxes accruing under this class go into the general funds of the State, unless more than one-half of the regular or fixed route of such bus is over a county maintained road, in which event, one-half of such tax is retained by the county maintaining such road.

Complainant operates between the States and is not within the provisions of Class No. 1.

Class No. 2 (page 290, bottom of page, published volume) includes each bus operating and carrying passengers on regular or fixed routes from one point in one county to another point in the same county. The taxes accruing under this class go into the general funds of the State unless more than one-half of its route traverses a county maintained [fol. 13] highway, in which event one-half of the tax shall be retained by the county for road purposes.

Complainant operates between the States and is not within the provisions of class No. 2.

Said revenue bill provides as follows (at page 291 published volume):

"Automobile busses operating upon the highways of this state and running into other states, not liable under the foregoing provisions."

This paragraph in the revenue bill immediately follows Classes Nos. 1 and 2 referred to above.

Class No. 3 is a State privilege tax only. All taxes accruing under this group go and belong exclusively to the general funds of the State.

Said Class No. 3 includes only bus operations upon the highways of this State for a distance of more than ten miles per trip, and that are not included in Classes Nos. 1 and 2.

This class (No. 3) includes only such bus lines as travers highways interstate, but are engaged in intrastate business. To illustrate:

(a) Busses operating from points in Arkansas to Memphis, Tennessee, where such route traverses more than ten

[fol. 14] miles of highway in Tennessee, and passengers are received in Tennessee for another point in Tennessee along its route, are liable under this class.

(b) Busses operating from points in Mississippi to points in Tennessee, where such route traverses more than ten miles of highway in Tennessee, and passengers are received in Tennessee for another point in Tennessee along its route, are liable under this class.

Complainant, in the operation of its busses, travers highways interstate, and is engaged exclusively in the transportation of passengers interstate, and such operations are not within the contemplation of the provisions of the Revenue Bill referred to in Class No. 3.

And if complainant's operations are within the provisions of the Act referred to as Class No. 3, then said Act as applied to complainant is unconstitutional and void, contravening the commerce clause of the Federal Constitution.

Said Tax is a revenue measure, and the proceeds therefrom go and belong exclusively to the general funds of the state. Such a tax on complainant's operations is an unreasonable burden on interstate commerce and therefore void. [fol. 15] The proceeds of such privilege taxes are not used in the construction and maintenance of highways, but go into the general funds of the State.

IX

Complainant avers that statutes levying taxes upon business will not be extended by implication beyond the clear import of the language used, nor will their operation be enlarged so as to embrace matters not specifically pointed out, although standing upon a close analogy. All questions of doubt arising upon the construction of the statute will be resolved against the government, and in favor of the citizen, because burdens are not to be imposed beyond what the statute expressly imports.

The tax in question is found in a revenue statute and such are construed against the government and in favor of the taxpayer. The intention will not be extended by implication, but must be clearly expressed.

X

Complainant has paid for and obtained license tags which are attached to its busses operating in Tennessee.

[fol. 16] The funds derived from the payment for such tags are used directly for the construction and maintenance of Tennessee highways. In addition to this, complainant pays a state tax of five (5) cents per gallon for gasoline purchased in Tennessee, which five (5) cents tax per gallon on gasoline is used exclusively for highway construction and maintenance in Tennessee.

Said privilege tax of $500.00 per annum per bus on busses carrying over 20 passengers and less than 30 passengers, in addition to hundreds of dollars paid annually for the gasoline tax and a license tax of about $75.00 per year per bus, is grossly excessive and exorbitant, and if applicable to complainant, is an unreasonable burden on interstate commerce.

IX

The interstate transportation of passengers for hire by motor propelled vehicles over the highways of the United States is "Commerce between the states," and is protected by the commerce clause of the Federal constitution.

[fol. 17] Federal aid in the construction of highways in the several states makes clear the purpose of Congress that state highways shall be open to interstate commerce. Any tax placed on such business by the state, as compensation for the privilege of carrying on such business, is an unreasonable burden on such commerce, and in conflict with Article I, Section 8, Clause 3, of the Constitution of the United States of America.

XII

Complainant paid, as aforesaid, to the defendant less than thirty (30) days ago, as privilege taxes on eight 29-passenger Mack busses, for one quarter of a year, the sum of One Hundred and Twenty-Five ($125.00) Dollars, plus clerk's fee of $1.50 per bus, aggregating a total of One Thousand and Twelve ($1,012.00) Dollars to recover which sum this suit is instituted.

The original receipts of the defendant County Court Clerk showing dates of payment and amounts paid, are here shown to the court, marked Exhibits Nos. 2 and 3 to this bill and made a part hereof.

[fol. 18]

XIII

Complainant is not "doing business" in Tennessee but is engaged exclusively in the transportation of persons for hire, by motor vehicle, from points in one state to points in another state, over Federal aid highways.

Complainant has the right to carry on such business under the Federal Constitution, it being a field reserved by the commerce clause for Federal regulation.

XIV

Premises considered, complainant prays:

1. That subpoena to answer issue and be served upon the defendant, requiring him to answer the bill, but the answer under oath is waived.

2. That the court decree that complainant is not liable for a privilege tax on each of its busses operating interstate in Tennessee under Chapter 89 of the Public Acts of 1927.

3. That complainant have and recover of the defendant the Sum of One Thousand Twelve ($1,012.00) Dollars and the costs of this cause.

4. That complainant have such further and other relief as it may be entitled to.

Lackey & Loser, H. Lynne Barber, Solicitors for Complainant.

[fol. 19] *Duly sworn to by J. Carlton Loser. Jurat omitted in printing.*

[fol. 20] IN CHANCERY COURT OF DAVIDSON COUNTY

[Title omitted]

ANSWER—Filed July 15, 1929

Now comes the defendant, Dick Lindsey, County Court Clerk of Davidson County, Tennessee, and answering so

much of the bill filed against him herein as he is advised is necessary for him to answer, answering says:

1. This defendant is without knowledge of the facts contained in the first paragraph of the complainant's bill and for the want of such knowledge neither admits nor denies the allegations in said paragraph and calls for strict proof.

[fol. 21] 2. The second paragraph of complainant's bill is admitted.

3. Referring to the third paragraph of the complainant's bill the defendant denies that the complainant is engaged wholly in interstate business, but on the contrary the defendant is advised and represents that the complainant is engaged in both inter and intrastate business. The defendant denies all other allegations in the third paragraph of said bill not herein expressly admitted or denied.

4. Referring to paragraph four of the bill this defendant is without knowledge of the equipment and cost of the same employed by the complainant in the conduct of its business in and through the State of Tennessee.

5. Referring to paragraph five of the bill this defendant presumes that the complainant has correctly copied into the said paragraph the provisions of Chapter 89 of the Public Acts of Tennessee for the year 1927, relative to the privilege tax on automobile busses, but reserves the right to point out any inaccuracies.

6. Referring to paragraph six of the bill this defendant denies that he refused and declined to issue to complainant license tags for its busses "unless it had paid a privilege tax assessed against each bus used in Tennessee by complainant and further threatened to arrest the operators of [fol. 22] its busses used in Tennessee unless and until such tax was paid."

Further answering said paragraph the defendant denies that a threat to attach such busses used in Tennessee, unless such tax was paid was made by him. He denies that he declined to issue to the complainant the license tags in question unless the complainant paid the privilege tax involved. The defendant was always ready and willing to issue the license tages to the complainant upon the payment of the prescribed fees therefor without any condition

whatsoever with reference to the payment of the privilege tax.

7. Referring to paragraph seven of the bill the defendant making answer thereto denies that the complainant is not liable for a privilege tax as claimed in said paragraph, but on the contrary the defendant avers that the complainant is liable for the privilege tax mentioned under the terms and provisions of Chapter 89 of the Public Acts of 1927; that said Act levies a privilege tax against the business of complainant and that such levy is in all things valid and in no way impinges on any Article of the Constitution of the United States.

[fol. 23] Further answering paragraph seven of the bill the defendant denies that the complainant paid the privilege tax in question under protest in any legal sense. It is admitted however that the complainant did pay the privilege tax mentioned but did so voluntarily and without any coercion or duress on the part of this defendant. And the defendant denies that the complainant is entitled to recover said payment so voluntarily paid by the complainant.

8. Referring to paragraph eight of the bill this defendant denies each and every allegation in said paragraph to the effect that the complainant's operations do not fall within the revenue bill mentioned for the year 1927, which alleges that the complainant is not liable for the privilege tax involved in this cause—on the contrary the defendant alleges that the operations of the complainant, in and through Tennessee, bring it under the revenue act in question and that the complainant is liable for the privilege tax provided in said Act against busses operating for hire along and over the roads and highways of the State. It is denied that said privilege tax constitutes an unreasonable burden on interstate commerce or any burden at all—it is denied that said Revenue Act, or that part of it levying a privilege [fol. 24] tax against the complainant, is unconstitutional and void as violating the commerce clause of the federal constitution or any other reason. It is denied that the complainant is engaged solely in interstate commerce as alleged but on the contrary it is engaged in both inter and intrastate commerce and in its business it operates very heavy busses on the highways of the State to the inconvenience of the traveling public and to the great wear and

detriment of the State's highways, and that the tax levied and collected is but a fair and reasonable contribution to the State for the use of its highways.

9. Referring to paragraphs nine and ten of said bill the defendant denies each and every allegation of fact contained in said paragraphs and expressly denies that the tax paid is excessive and exhorbitant, and for that reason is an unreasonable burden on interstate commerce.

10. Referring to paragraphs eleven, twelve and thirteen of the bill the defendant denies each and every allegation in said several paragraphs in so far as said allegations involve the tender of an issue of fact. It is expressly denied that the complainant is engaged solely in interstate com-
[fol. 25] merce in the sense claimed—it is expressly denied that the tax levied and complained of in this case violates the interstate commerce clause of the United States or that said tax is in any wise a burden on interstate commerce. On the contrary, this defendant is informed, believes and charges that the State in the exercise of its police power has a right to regulate and control commerce on its streets and to levy and collect a contribution, even in the form of a privilege tax from those occupying the highways for commercial purposes for the use of said highway s. It is expressly denied that the complainant is not doing business in Tennessee but on the contrary it is shown that the complainant is doing business in Tennessee in the sense of the law.

For further answer to the bill the defendant expressly denies that the complainant paid the privilege tax in question under protest in the sense of the law but on the contrary it is shown that the complainant made such payment voluntarily and without any coercion or compulsion of any kind or character from this defendant—in short this defendant states that the payment in question was made by the complainant voluntarily and the defendant denies each and every allegation in the bill to the effect that said payment was made by the complainant under duress or compulsion by anything done or said by this defendant.
[fol. 26] For further answer to the bill as a whole this defendant denies each and every allegation contained in the bill not herein admitted or denied.

Now, having fully answered, this defendant prays to be hence dismissed with cost.

R. E. Maiden, Solicitor General for Tennessee. W. H. Eagle, Assistant Attorney General.

[fol. 27] IN CHANCERY COURT OF DAVIDSON COUNTY

INTERSTATE TRANSIT, INC., Complainant,

versus

DICK LINDSEY, Defendant

STIPULATION OF FACTS—Filed February 25, 1930

In this cause it is agreed between the parties as is evidenced by the signatures of counsel, to the following facts:

1. That complainant, Interstate Transit, Inc., is a corporation, organized and existing under the laws of the State of Ohio, and that its charter of incorporation authorizes it to engage in the interstate transportation of persons for hire, by motor bus.

2. That complainant paid to the County Court Clerk, Dick Lindsey, defendant herein, the sum of One Thousand [fol. 28] and Twelve ($1,012.00) Dollars, as a privilege tax on eight Mack 29-Passenger busses, used by complainant in the interstate transportation of passengers for hire in Tennessee. Said payment was for the one-quarter of a year's privilege tax, and includes a clerk's fee of $1.50 per bus. Said tax was paid by complainant involuntarily, under protest and by reason of the duress employed by the defendant.

3. That the tax sought to be recovered in this cause was levied by defendant under Chapter 89, Acts 1927 (Revenue Bill), pages 290 and 291 of published acts. That at the time the tax in question was paid involuntarily, the complainant was engaged exclusively in the interstate transportation of passengers for hire by motor bus in Tennessee, unless the facts and evidence herein constitute a doing of business in Tennessee, and had compiled with all the police regulations of the State, including the payment of

license fees for tax and the tax of five (5) cents per gallon on gasoline.

5. That the said tax was levied under the Revenue Bill for the year 1927, and that said funds go and belong exclusively to the general funds of the State; and that no portion of said tax is used directly in the construction or main-[fol. 29] tenance of highways, nor does any part of said tax go to or is used by any agency or board in Tennessee charged with the duty of regulating or supervising bus operations, either intra- or interstate.

6. That the complainant operates its busses interstate over a route or highway constructed jointly by the Federal Government and the State of Tennessee, and maintained by the State of Tennessee, the line being between Cincinnati, Ohio, and Atlanta, Georgia, via Louisville, Kentucky, and Nashville, Tennessee.

We further agree that these stipulations may be filed and read as evidence in this cause. This the 2nd day of January, 1930.

Interstate Transit, Incorporated, Complainant, by J. Carlton Loser, Solicitor. Lackey & Loser. Dick Lindsey, Defendant, by R. E. Maiden, Solicitor.

[fol. 30] IN CHANCERY COURT OF DAVIDSON COUNTY

INTERSTATE TRANSIT, INC., Complainant,

vs.

DICK LINDSEY, Defendant

DECREE—February 28, 1930

This cause came on to be heard this 27th day of February 1930, before the Honorable R. B. C. Howell, Chancellor, upon the original bill, answer thereto, stipulation as to evidence, and upon argument of counsel, from a consideration of all of which the Court is pleased to find as follows:

1. The complainant objected to the introduction of the evidence set out in paragraphs 8 to 12 inclusive and para-

graph 15 of the stipulations, because said evidence is incompetent, irrelevant and immaterial on the following grounds:

[fol. 31] (a) The transactions sought to be proved by said evidence occured in October and November, 1929, while the tax sought to be recovered is for three months periods ending in June and July 1929, and therefore does not reflect on the issues of fact involved.

(b) The statements and acts, referred to in said paragraphs were contrary to specific instructions as to the alleged agents of complainant and were beyond the actual authority of said agents, as well as beyond the apparent scope of the authority of said agents, and therefore not competent evidence against complainant.

The Court was pleased to overrule said objection to said evidence, to which action of the court the complainant excepted.

2. That the evidence contained in paragraphs 8 to 12 inclusive, and paragraph 15 of the stipulations, seeking to show that complainant was engaged in the intrastate transportation of passengers for hire in Tennessee, by reason of the character of witnesses, the manner in which it was obtained and the reason therefor, is not convincing nor is it [fol. 32] sufficient to overthrow the positive evidence of the officers of complainant to the effect that it was engaged solely in interstate commerce.

3. That the complainant, Interstate Transit, Inc. is engaged solely in the interstate transportation of passengers for hire in Tennessee, and is not "doing business" therein so as to make it liable for the tax.

4. That the witness Barber as set out in paragraphs 14 and 17 of the stipulation, is in charge of complainant's interstate operations in Tennessee and has instructed all ticket agents in Tennessee not to sell tickets for intra-state carriage, as well as directing bus operators not to carry passengers intra-state, and the isolated violations of instructions, if true, would not be binding on complainant unless ratified by it, or there was collusion on the part of proper officers with such ticket agents, so as to invoke the penalty, which is not shown in this cause.

5. That the complainant have and recover of the defendant, Dick Lindsey, County Court Clerk, the sum of One Thousand and Twelve ($1012.00) Dollars, as prayed in the bill, said sum having been paid as a privilege tax on eight 29-passenger busses for one quarter of a year, involuntarily and under duress, together with the costs hereof, for which execution may issue.

[fol. 33] To said action of the court, the defendant Dick Lindsey, County Court Clerk, excepted and prayed an appeal to the next term of the Supreme Court sitting at Nashville.

Said defendant in the collection of said tax, was acting for the State, and he is relieved of making bond for his said appeal.

The Clerk and Master is hereby directed to transcribe the evidence in this cause together with the pleadings and records herein, and forward same to the Clerk of the Supreme Court with the exception of Exhibits Nos. 1 and 2 to the stipulation, which shall be sent up in their original form.

O. K. Lackey & Loser, Solicitors for Complainant. R. E. Maiden, Solicitor for Defendant.

[fol. 34] IN THE SUPREME COURT OF TENNESSEE, AT NASHVILLE, TENNESSEE

INTERSTATE TRANSIT, INCORPORATED, Appellee,

vs.

DICK LINDSEY, County Court Clerk, Appellant

Davidson County Equity

STATEMENT OF CASE AND ASSIGNMENTS OF ERROR

May it please the Court:

I

Statement of Case

The case involves the right of the appellee, complainant below, a foreign incorporated bus operator over the high-

ways of Tennessee, to recover certain privileges taxes paid under protest to appellant Clerk, defendant below. The case rests on the assumption that:

(a) The operation of complainant over the highways [fol. 35] of Tennessee do not fall within the provisions of Chapter 89 of the Public Acts of 1927 (Revenue Bill); and (b) that it is engaged exclusively in interstate commerce, and by reason of this fact is exempt from such taxation.

Pleadings and Proceedings

1. The Bill.—It is alleged that complainant is a corporation organized and existing under the laws of the State of Ohio with its home or principal place of business at Cincinnati; that it is engaged in the business of operating motor buses transporting passengers for hire between the states; that it operates a fleet of buses between Cincinnati, Ohio and Atlanta, Georgia, via Louisville, Kentucky, Nashville and Chattanooga, Tennessee; that the highways over which it operates these buses were constructed jointly by the federal government and the several states through which said route passes; that it is engaged exclusively in the transportation of passengers interstate and not intrastate; and that no passengers are received in Tennessee for transportation to any point in Tennessee, but all passengers are discharged in a state other than the state in which such passenger embark; that it has large investments in equipment and many persons in its employ; that defendant is the Clerk of the County Court of Davidson County, Tennessee, and charged with the duty of collecting privilege taxes; that said officer, on the assumption that complainant's operations fell under Chapter 89 Public Acts [fol. 36] of 1927 (Revenue Bill), compelled it under duress to pay the tax in question, which was done under protest; that Chapter 89, Public Acts of 1927 (Revenue Bill) has no application to complainant's operations in Tennessee, and that finally complainant is engaged exclusively in interstate commerce and not liable for the tax, even though the provisions of the Revenue Act apply to its operations.

The bill embraces a prayer for appropriate relief. (Tr., P. 1 et seq.).

2. The Answer.—The answer admits the payment of the tax; asserts complainant's liability therefor under the provisions of Chapter 89 of the Public Acts of 1927 (Revenue Bill); alleges that complainant is engaged in both interstate and intrastate business and is, therefore, liable for the exaction; and finally that the complainant is liable for said exaction, even though engaged exclusively in interstate commerce (Tr., p. 25 et seq.).

3. Stipulations.—The case was heard before the Chancellor on stipulations. These stipulations establish the existence of certain facts and in addition that certain witnesses would give certain testimony with respect to the question of whether or not complainant was doing an intrastate business (Tr., p. 27 et seq.).

[fol. 37] 4. Decree.—At the hearing the Chancellor sustained the bill and granted the relief therein prayed. The defendant Clerk excepted to the action of the Court and prayed and perfected an appeal to this Court (Tr., pp. 42, 43, 44).

II

Assignments of Error

First

The Chancellor erred in sustaining the bill and decreeing in favor of complainant and against the defendant Clerk for $1012.00 and the costs of the cause (Tr. p. 44).

Second

The Chancellor erred in holding and decreeing that the complainant was not engaged in intrastate commerce, and in holding and decreeing that it was engaged exclusively in interstate commerce, and that being so engaged was therefore not subject to the tax (Tr. p. 43); because the great weight of evidence and the only evidence upon the subject shows that the complainant was engaged in intrastate commerce. The evidence upon this point is referred to and relied upon in a discussion of the facts hereinafter.

Third

The Chancellor erred in holding and decreeing that the complainant was engaged wholly in interstate transporta-

[fol. 38] tion of passengers for hire in Tennessee and was not doing business in Tennessee in such manner as to make it liable for the privilege tax in question (Tr. p. 43); for the reason that a bus operator engaged exclusively in interstate operations may be taxed in an amount commensurate with the use of the highway is subjected to by the operation. The facts and the law with reference to this subject will be cited hereinafter.

Fourth

The Chancellor erred in decreeing that the evidence contained in paragraphs eight to twelve inclusive and paragraph fifteen of the stipulations was insufficient to establish the fact of the complainant doing an intrastate business and did not overcome the testimony of the officers of the complainant tending to show that it was engaged wholly in interstate commerce (Tr. p. 43); because the stipulation and the proof in support thereof shows the complainant was engaged in intrastate operation and is conclusive upon that point. Therefore, the Chancellor was in error in holding otherwise.

Fifth

The Chancellor erred in refusing to hold and decree that the complainant was liable for said privilege tax, even [fol. 39] though engaged exclusively in the operation of interstate buses; because such tax can be lawfully levied and collected from a bus operator using the highways of the State in interstate operations, as such operator's fair and reasonable contribution to the cost of constructing and maintaining the highways of the State; and it makes no difference that the tax is not levied and collected for the use of the highways of the State; and it makes no difference that the tax is not levied and collected for the use of the highway fund itself, so long as the State out of other funds looks after the proper and necessary maintenance and upkeep of the highways over which the operator carries on his operation as is done by the State in this case.

Sixth

The Chancellor erred in failing and refusing to deny the relief sought, or any relief, and in not dismissing the bill

and taxing it with the costs of the case, (Tr. p. 42); because of the facts and reasons hereinafter set out in the brief.

[fol. 40] IN SUPREME COURT OF TENNESSEE

INTERSTATE TRANSIT, INC.

v.

DICK LINDSEY, County Court Clerk

Davidson Equity

OPINION

This appeal calls for a construction in application of Section 4, Chap. 89 of the Revenue Act of 1927. The bill was filed to recover privilege taxes paid to the defendant Clerk under protest by an Ohio corporation operating passenger motor busses, known as Colonial Stages, between Cincinnati, Ohio, through Kentucky and Tennessee, via Louisville, Nashville and Chattanooga, to Atlanta, Georgia. The paragraph of the Section under which collection was made is headed "Classification No. 3" and is as follows:

"Automobile Busses Operating Upon the Highways of This State and Running Into Other States, not Liable under the Foregoing Provisions

(State Privilege Tax Only)

"Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provisions, shall pay as follows:

[fol. 41] "Each bus carrying 5 passengers or less, per annum $50.00
"Each bus carrying over 5 passengers and not more than 10 passengers, per annum 100.00
"Each bus carrying over 10 passengers and less than 15 passengers, per annum 200.00

"Each bus carrying 15 passengers and less than 20 passengers, per annum..... 350.00
"Each bus carrying over 20 passengers and less than 30 passengers, per annum..... 500.00
"Each bus carrying over 30 passengers, per annum. 750.00

"Provided that this tax shall be in lieu of all county and municipal taxes; Provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State."

The corporation says that it transports interstate only, that therefore the Act does not, fairly construed, embrace it, and that if construed to embrace it the tax laid would be in contravention of the Commerce Clause of the Federal Constitution (Art. 1, Sec. 8, Clause 3).

The State insists, (1) that the corporation transports both intrastate and interstate, and therefore comes within the terms of the Act, and (2) that even though its business is interstate only, the Act applies and the Federal Constitution does not prohibit its application.

The Chancellor found on the record made that the corporation was doing interstate transportation only, and that the State is precluded by the Commerce Clause of the Federal Constitution from collection of the tax. While the proof shows some disposition on the part of employees of [fol. 42] the corporation to wink at and make easy an evasion of the interstate policy of the Corporation, through the use of tickets calling for destinations immediately over the State lines, we think the record as a whole sustains the finding of the Chancellor that the rules and regulations of, and the instructions issued by the Corporation, together with the form and recitals of its tickets, make out a case of interstate business only.

Conceding that the transportation is interstate, is this Corporation so operating over the highways of the State liable for this tax? A common carrier transporting by bus passengers both interstate and intrastate was held liable for a tax of like nature in Gatlin v. Harrison, 155 Tenn., 560. This Court followed the opinion of the U. S. Supreme Court in Clark v. Poor, et al. since reported in 274 U. S. 557, 71 L. Ed. 1200, in which case the transportation was interstate only. The later case of Sprout v. South Bend,

277 U. S. 170, 72 L. Ed. 837 was in accord. Counsel for the Corporation frankly admit that these, and other cases, clearly recognize that a fee may be lawfully exacted by the State from one doing an interstate transportation business only, but says (1) that the Revenue Act of 1927 does not by its terms apply to one transporting passengers interstate only, and (2) that an essential distinction exists between a license fee going into a special highway fund, and a privilege tax going into the general funds of the State. [fol. 43] Counsel quote from Sprout v. South Bend, supra, as follows:

"It is true that a State may impose even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways." Citing, Hendrick v. Maryland, 235 U. S., 610, 622, 59 L. Ed. 385, and Inter-State Busses Corp. v. Blodgett, 276 U. S. 245, 72 L. Ed. 551.

We think this section of our Revenue Act embraces in its terms busses transporting interstate. The caption of the pertinent paragraph reads, "busses * * * running into other states," and in its body it levies the tax on "each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip," and not liable under preceding paragraphs. A purpose is indicated by the ten mile restriction to avoid burdening interstate transportation unreasonably, relieving from this tax in cases of incidental and inconsequential crossing of, or entry over, the state lines in the course of through travel.

We come then to this single issue: Is the power of the State to impose "a reasonable charge" upon busses making use of its highways for interstate transportation limited to a regulation or license fee under the police power, as insisted, and confined to legislation which appropriates the fund exclusively and specifically to highway purposes, either of regulation or maintenance. This insistence seems to be met by Mr. Justice Brandeis in Clark v. Poor, supra, who, after referring to the contention [fol. 44] therein made that "all of the tax is not used for maintenance and repair of the highways," said:

"This, if true, is immaterial. Since the tax is assessed for a proper purpose and is not objectionable in amount, the use to which the proceeds are put is not a matter which concerns the plaintiffs."

The Commerce Clause does not restrict the power of the State to tax unless (1) the tax is discriminatory, or (2) it is unreasonably burdensome on interstate commerce. Here we have no discrimination. A like tax is levied by the different paragraphs of the pertinent section of the Act on all bus operators using the roads of the State, (1) from point to point within the State, (2) from point to point within a County, and (3) from a point within to a point without the State,—provided the distance is as much as ten miles.

Nor is this tax apparently unduly burdensome. Not only is the charge approximately the same on all motor vehicles of like passenger carrying capacity, whether traveling wholly within the State or not, but it is fixed according to a "uniform, fair and practicable standard." In Hendrick v. Maryland, supra, it was said:

"In view of the many decisions of this Court there can be no serious doubt that where a state at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefore. The amount of the charges and the method of collection are primarily for determination by the State itself; and so long as they are reasonable and are fixed according to some uniform, fair and practicable standard, they constitute no burden on interstate commerce." (Citing authorities.)

[fol. 45] And in Clark v. Poor, supra, it was said:

"The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state to insure safety and convenience and the conservation of the highways. (Citing authorities.) Users of them although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire who make the highways their place of business may be properly charged an extra tax for such use." (Citing authorities.)

It is to be borne in mind that the privilege of use of highways, built and maintained by the states at enormous expense, is a privilege in a peculiar sense not applicable to the use by railways of their rights of way over roadbeds and rail owned and maintained by the railways, rather than the state. The language above quoted from opinions of the U. S. Supreme Court, one by Mr. Justice Brandeis and the other by Mr. Justice McReynolds, suggests this distinction, and clearly recognizes the right of a state, not only to regulate under its police power all the users of its highways, but the right to charge therefor. It is not the placing of a tax charge upon such carriers interstate, which is prohibited by the Commerce Clause, but the placing of such tax in such a way as to burden and interfere with the free movement of commodities or passengers interstate. A charge is not a burden when its equivalent in goods, service or accommodation is exchanged therefor. The State furnishes expensively constructed and maintained highways for the ac-ommodation of these carriers for hire and for [fol. 46] profit. An interstate passenger bus might as consistently contend against a toll charge over a river bridge, as against a charge for traversing a State owned highway. The record shows that the fare for a single passenger across the state is $3.50, and the tax on a 20 passenger bus is $350.00 per year. Assuming that a bus makes but one trip daily, it traverses more than 200 miles of this highway at a charge of less than $1.00 for each 15 to 20 passengers. The tax thus appears to be entirely reasonable.

Clear as it is, both on principle and authority, that the State may exact a charge for the use of its highways, without reference to whither the user comes, or whence he goes, we are not of opinion that the form or name of the charge is determinative of the right. Nor are we persuaded that the right is defeated by a failure to designate in the Act by restrictive terms the fund into which the proceeds are primarily to go. This is hardly more than a matter of bookkeeping. Once in the general funds of the State, as provided by this Act, it is subject to distribution and allocation in any direction where it may be found to be most needed. If it meets or relieves the State's requirements in one direction, more is left for application in another. It is a contribution to the up-keep of the State's government

as a whole, and a large part of this up-keep cost is the item of highways.

[fol. 47] In 5 R. C. L. p. 797, it is said that, "a state may impose a tax, reasonable in amount and not discriminatory, on automobiles using the highways of the State, though they belong to non-residents and are employed in interstate commerce." Kane v. State, 81 N. J. L. 594, 80 Atl. 453, Ann. Cas. 1912 D. 237, is cited. In that case the court recognizes that the license fee is a tax for revenue purposes and that it affects interstate commerce, but finding the charge reasonable and not discriminatory holds such a charge not obnoxious to the Federal Commerce Clause. Decisions of the U. S. Supreme Court affirming the right of a state to impose charges, although affecting interstate commerce, are referred to, where the state had constructed wharfs for the handling of freight, or locks or booms in navigable streams, on the sound principle that the state "having expended moneys, either itself, or by the agencies created by it, in increasing the facility with which commerce, either interstate or intrastate, may be carried on, is entitled to charge a fair remuneration for the outlay made by it, and for the maintenance of the public work which it has constructed." And so applicable to the case before us is the further language of the opinion of the learned Chief Justice in that case that we quote at length:

"A very ordinary example of the exercise of this power is the construction of public roads known as 'turnpikes' by agencies created by the state, for the use of which tolls are permitted to be charged to persons using the same. Such [fol. 48] public roads are open to the use of every person desiring to travel upon them upon payment of the tolls authorized to be charged, but it has never been suggested, so far as we are aware (and certainly any such suggestion would be without merit), that a team and wagon bringing merchandise from another state is entitled to the use of these improved highways without the payment of the required toll because engaged in interstate commerce.

"Although, ordinarily, turnpikes are built and owned by corporations created by the state for the purpose of constructing and maintaining them, what the state may do indirectly through such agencies it may do directly—that

is, it may itself lay out and construct such improved public roads, and charge reasonable tolls to all persons using the same, without regard to the character of the business for which they are being used. And this is practically what New Jersey is now doing. It has spent millions of dollars in improving the roads of the state, and is yearly expending hundreds of thousands more in their extension and maintenance. It has found that the use of these roads by heavy and swiftly moving automobiles results in their rapid deterioration, and increases largely the annual expense of maintaining them in proper condition. It considers, and rightly, we think, that a use of its roads which is so abnormally destructive should no longer be free, and, by the law of 1908, it imposes upon all of these vehicles which are driven over its roads a charge for such user for the [fol. 49] purpose of raising revenue to be applied to their upkeep. Instead of charging a mileage fee, or toll, to be regulated by the distance traveled, it has seen fit to require the payment of a lump sum by the owners of such machines, for the privilege of using its roads, the charge being regulated by the horse power shown. * * * The charging of an annual sum for the use of its highways by automobiles, instead of a mileage fee, is clearly a matter within the discretion of the state. No Constitutional objection lies in the way of a legislative body's prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows. Home Ins. Co. v. New York, 134 U. S. 594, 10 S. Ct. 593, 33 U. S. (L. ed.) 1025. The only limit upon its power is that the amount charged shall not be unreasonable; and there is no suggestion that such a condition is created by the present law."

This decision was reviewed and affirmed by the U. S. Supreme Court in Kane v. New Jersey, 240 U. S. 160, 61 L. Ed. 222, and cited with approval in Sprout v. South Bend, supra.

We are of opinion that the Revenue Act applies and that the tax is valid. The decree must be reversed and the bill dismissed.

Chambliss, J.

[fol. 50] IN SUPREME COURT OF TENNESSEE

INTERSTATE TRANSIT COMPANY, INC.,

vs.

DICK LINDSEY, County Court Clerk

Davidson Equity

DECREE—June 28, 1930

This cause came on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be reversed, the original bill be dismissed, and that the Interstate Transit Company, Incorporated, principal and J. Carlton Loser, surety, will pay all of the costs of this cause, for which let fi. fa. issue.

[fol. 51] IN SUPREME COURT OF TENNESSEE

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed Aug. 2, 1930

To the Honorable Supreme Court, the Honorable Grafton Green, Chief Justice of the Supreme Court of the State of Tennessee:

Petition of Interstate Transit, Inc., a Corporation organized and Existing under the Laws of the State of Ohio, with Its Principal Office and Place of Business in the City of Cincinnati, Ohio

I

The petitioner shows that heretofore, towit, on June 28, 1930, the Supreme Court of the State of Tennessee, made and entered a final order and judgment herein in favor of

Dick Lindsey, County Court Clerk of Davidson County, Tennessee, a resident of Davidson County, Tennessee, who is hereinafter designated as appellee, and against the above [fol. 52] named petitioner, who is hereinafter designated as appellant or petitioner, in which final order and judgment and proceedings had prior thereunto in this case, certain errors were committed greatly to the prejudice of the petitioner, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

II

The petitioner above named shows that this is a proceeding instituted by bill in the Chancery Court of Davidson County, Tennessee, to recover from the appellee certain privilege taxes paid involuntarily and under protest. The Chancellor in the Trial Court decreed in favor of petitioner and against appellee. On appeal to the Supreme Court of Tennessee said court reversed the Chancellor and dismissed petitioner's bill, decreeing that petitioner was liable for the tax in question, which action on the part of the Supreme Court of Tennessee petitioner respectfully insists is erroneous. This proceeding is instituted so that the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment and decree aforesaid of said Supreme Court of Tennessee be reversd.

The petitioner shows that, heretofore, it filed in Part I of the Chancery Court for Davidson County, Tenneseee, its bill, and in said bill, petitioner averred that it was a corpo- [fol. 53] ration, organized and existing under the laws of the State of Ohio, with its principal office and place of business in the City of Cincinnati, Ohio; that under its Charter of Incorporation it is authorized to operate for hire motor busses for the interstate transportation of passengers; that it operated, in addition to other lines, an interstate bus line between Cincinnati, Ohio and Atlanta, Georgia, via Louisville, Kentucky, Nashville and Chattanooga, Tennessee; and that in operating said line or route it traversed the highways of Ohio, Kentucky, Tennessee and Georgia.

The petitioner averred that Dick Lindsey, appellee, was the regularly elected, constituted and acting County Court Clerk of Davidson County, Tennessee, and that he had so acted for several years prior to filing of the bill in this

cause; that petitioner, under its charter, and in the exercise of rights guaranteed it under the Constitution of the United States, established its route between Cincinnati, Ohio, and Atlanta, Georgia, and operated its busses over said route for the exclusive interstate transportation of passengers for hire over the highways in Tennessee, Ohio, Kentucky and Georgia, said highways being constructed jointly by the Federal Government and the several states; that it was engaged exclusively in the transportation of passengers interstate and not intrastate; that no passenger was or is received in Tennessee for transportation in Tennessee, but all passengers transported were discharged in a state other than the state in which such passengers embarked; that the route traversed by petitioner was and is interstate, and that it carried passengers exclusively interstate.

[fol. 54] The petitioner averred in said bill that Chapter 89 of the Public Acts of Tennessee for the year, 1927, (Revenue Bill) provides as follows:

"Section 4 (page 284 published volume) provides 'That each vocation, occupation and business hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privilege shall be as hereinafter fixed, which privilege tax shall be paid to the County Court Clerk, as provided by law for the collection of such revenue.'

"At pages 290 and 291, published volume, of said Act, it is provided as follows:

'Automobile Busses, Including Busses Operating Into and/or Through Other Counties

(State Privilege Tax Only)

'For each automobile bus operating and carrying passengers on regular or fixed routes from one point in this State, to another point in this State, for which charge is made, in such county in and from which it operates, there shall be paid to the County Court Clerk, in such County, in and from which it operates, or claims as its situs, the tax hereafter fixed, and said tax so paid shall be in lieu of all county and municipal privilege taxes for such operation therein. The levy of any such privilege tax by any County or Municipality on such busses is hereby prohibited.

'The privilege tax hereby levied on such busses is as follows:

'Each bus carrying 18 passengers and less than 30 passengers, per annum $500.00.

Provided, that the privilege tax accruing under this heading shall go to and belong exclusively to the General [fol. 55] Fund of the State.

'Provided, further, that where any automobile busses operate over one-half of their mileage or more over a county maintained road, that one-half of the above tax shall be retained by the county for county road purposes.

'Automobile Busses Operating Exclusively in One County

'Each person, firm or corporation operating an automobile bus and carrying passengers from one point in one county to another point in the same county on regular or fixed routes, shall pay the county court clerk in such county the following privilege tax:

'Each bus carrying 20 passengers and less than 30 passengers, per annum $500.00.

'Provided, that this tax shall be in lieu of all county and municipal tax, except where said automobile busses operate on county highways, maintained by the county over a majority of the mileage, one-half of said tax shall be retained by the county for road purposes.

'Provided, further, that this section shall not apply to persons, firms or corporations who operate a car of not more than 5 passenger seating capacity on a route outside a city or town not exceeding five miles, nor persons, firms or corporations making not over two round trips per day, with a car of not over 5 seating capacity.

'Provided, further, that the state privilege tax accruing under this heading shall go and belong exclusively to the General fund.

'Automobile busses operating upon the highways of this State and running into other state, not liable under the foregoing provisions.

[fol. 56] State Privilege Tax Only

'Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this state for a distance of more than ten miles per trip, and not

liable for a privilege tax under the foregoing provisions shall pay as follows:

'Each bus carrying over 20 passengers and less than 30 passengers, per annum $500.00.

'Provided, that this tax shall be in lieu of all county and municipal taxes; provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General funds of the state.' ''

That petitioner applied to the appellee for the issuance of license tags for its busses to be used in Tennessee; that he refused and declined to issue such license plates or tags unless petitioner paid a privilege tax of $500.00 per bus per year, and threatened to arrest petitioner's operators unless and until such privilege tax was paid, as alleged to have been assessed and exacted by said Chapter 89 of the Public Acts for the year, 1927, as set out next hereinabove.

Petitioner further averred that it was not liable for a privilege tax on its busses used exclusively in its interstate business, and that no such tax was levied on it under the terms of said Chapter 89, Public Acts for 1927; that if such a tax was levied by said Act, same was and is null and void, being in contravention of the Commerce Clause of the Federal Constitution, being Article 1, section 8, clause [fol. 57] 3 thereof.

Further, petitioner averred that it was offered the alternative of paying a privilege tax on eight busses, amounting to $4,000.00 per annum, or $1,000.00 per quarter of a year plus a fee of $1.50 per bus, or refrain from carrying on its lawful business in Tennessee until such time as its liability for such a tax could be determined, or to operate in Tennessee without license plates or tags and subject itself to frequent arrests and interferences by such officers.

It was further averred in said bill by petitioner that its equipment for Tennessee operations had been obtained and its employees were ready for activities, and to await a judicial determination of its liability for such privilege tax would have resulted in idleness for its equipment and employees, entailing serious and permanent loss.

It was further averred by petitioner that, under such duress and coercion on the part of appellee, it involuntarily paid a privilege tax on eight 29-passenger busses for one-quarter of a year, in the sum of $126.50 each, amount-

ing to $1,012.00, and that such amount was paid under protest, and that the suit herein referred to was to recover said sum paid under protest and involuntarily.

[fol. 58] Petitioner further averred that under said Revenue Bill for the year, 1927, hereinbefore referred to, there were three classes of bus operations that were made privileged occupations and that appellant or petitioner, did not come within the provisions of said Act.

It was shown in said petition that class No. 1 included each bus operating and carrying passengers from one point in the state to another point in the state; that class No. 2 included each bus operating and carrying passengers from one point in one county to another point in the same county, and that immediately following the two classes referred to in said Revenue Bill, there was a provision as follows:

"Automobile busses operating upon the highways of this state and running into other states not liable under the foregoing provisions."

It was further shown that under class No. 3, said bill levied a privilege tax for state purposes only, and that all taxes accruing under said class go and belong exclusively to the general funds of the state; that said class No. 3 included only bus operations upon the highways of this state for a distance of more than ten miles per trip, and were not included in classes Nos. 1 and 2; that class No. 3 included only such bus lines as traversed highways interstate and were engaged in intrastate business.

[fol. 59] It was further averred in said bill that petitioner, in the operation of its busses, traversed highways interstate, and was engaged exclusively in the transportation of passengers interstate, and that its operations were not within the purview of the provisions of the Revenue Bill referred to as class No. 3.

Petitioner further averred in said bill that if its operations were within the provisions of the Act referred to as class No. 3, that said Act as applied to its interstate operations was unconstitutional and void, contravening the Commerce Clause of the Federal Constitution.

The petitioner further averred in its said bill that said tax was a revenue measure and the proceeds therefrom go into the general funds of the state, and such a tax on its

operations was an unreasonable burden on interstate commerce and therefore void, and that the proceeds of such privilege tax were not used in the construction and maintenance of Tennessee highways.

It was further averred that statutes levying taxes would not be extended by implication nor their operation enlarged so as to embrace matters not specifically pointed out; that questions of doubt arising upon the construction would be resolved against the government and in favor of the citizen, and that the tax in question is found in a revenue measure.

Petitioner further averred that it paid for and obtained license tags for its busses, and that the funds derived [fol. 60] therefrom were used directly for the construction and maintenance of Tennessee highways, and further that it paid a five cent tax per gallon on all gasoline used and purchased in Tennessee, which five cent tax per gallon is also used exclusively for highway construction and maintenance in Tennessee. It was further averred in said bill by petitioner that said tax of $500.00 per bus on its interstate operations in Tennessee was grossly excessive and exorbitant, and is an unreasonable burden on interstate commerce.

It was further averred by petitioner in its said bill that the interstate transportation of passengers for hire by motor propelled vehicles over highways of the United States is "commerce between states", and is protected by the commerce clause of the Federal Constitution.

That Federal aid in highway construction makes clear the purpose of Congress that such highways shall be open to interstate commerce, and that any tax placed on such business by the state as compensation for the privilege of carrying on such business is an unreasonable burden on same and in conflict with the Federal Constitution.

It was further averred by the petitioner that it was not "doing business" in Tennessee, but was engaged exclusively in transporting passengers for hire from points in one state to points in another state, over Federal aid highways, and that such business was lawful under the Federal Constitution, it being a field reserved by the commerce clause for Federal regulations.

[fol. 61] Petitioner prayed for process and other appro-

priate relief, seeking to recover the sum of $1,012.00 paid to appellee, Dick Lindsey, under protest and involuntarily.

III

Appellee answered said bill, denying generally that petitioner was engaged wholly in interstate commerce, but alleged that he was advised that it was engaged in both inter- and intra-state commerce. It was further denied that the tax was paid involuntarily and under duress. Further, that said Act levied a privilege tax on its interstate business and that such tax in no way offended any article of the Constitution of the United States.

IV

Petitioner would further show that no proof was taken in this cause in the Trial Court, but certain facts were admitted, while other alleged facts were submitted to the court as being evidence that would be testified to should the witnesses be called. Said admitted facts show that petitioner paid said tax in the sum of $1,012.00 to the appellee as a privilege tax on its busses involuntarily, under protest and by reason of the duress employed by the appellee.

It was further admitted by appellee that petitioner was engaged exclusively in the interstate transportation of pas- [fol. 62] sengers for hire by motor bus, and that it operates its busses exclusively over Federal aid highways, unless certain facts presented to the court constituted the doing of an intrastate business in Tennessee.

It is further shown by petitioner that the Chancellor decreed that petitioner was engaged exclusively in interstate transportation of passengers for hire in Tennessee, and was therefore not liable for the tax, and decreed in favor of petitioner in the sum of $1,012.00 and against the appellee.

Petitioner shows that the appellee excepted to the action of the Chancellor in so decreeing against him, and prayed an appeal to the Supreme Court of Tennessee, the highest court in said state, and said Supreme Court, at its December term, 1929, towit, on June 28, 1930, reversed the judgment of the Trial Court, namely, Part I of the Chancery

Court at Nashville, Davidson County, Tennessee, and dismissed the said bill of petitioner.

It is further shown by petitioner that the Supreme Court of Tennessee held in its said decree that petitioner was engaged exclusively in interstate transportation of passengers for hire by motor bus, and that it was not doing an intra-state business.

V

Petitioner insisted in the Supreme Court of Tennessee—

[fol. 63] First, that under a proper construction of the Revenue Bill of 1927, it was not within the purview of said Act; and

Second, that if it was within the purview of said Act that same was null and void, being in contravention of the Commerce Clause of the Federal Constitution, same being Article I, Section 8, clause 3 thereof.

Further it was insisted by petitioner in the Trial Court—

First, that said tax of $500.00 per bus, if applicable to it, was and is grossly excessive and exorbitant, and unreasonably burdened interstate commerce; and

Second, that the placing of such a tax on interstate commerce invaded a field reserved by the commerce clause for Federal regulations, and was and is offensive to Article I, section 8, clause 3 of the Federal Constitution.

VI

The petitioner shows that Chapter 89 of the Public Acts of Tennessee for the year, 1927, section 4 thereof, as construed by the Honorable Supreme Court of Tennessee, is in violation of Article I, section 8, clause 3, of the Constitution of the United States, in that it places an unreasonable burden on interstate commerce.

[fol. 64] The Petitioner further shows that the said judgment of the Supreme Court of the State of Tennessee was and is a final judgment in the highest court of the State of Tennessee, in which court a decision in said suit could or can be had.

The petitioner further shows that a Federal question was made in such case, towit, as hereinbefore set out, and that said judgment of the Supreme Court of Tennessee was and is repugnant to and in conflict with the Federal Constitution, and particularly with Article I, Section 8, Clause 3, of the Constitution of the United States as aforesaid, and that the said judgment of said Supreme Court was contrary thereto and the decision of said Federal question was necessary to the judgment rendered.

VII

Wherefore your Petitioner prays:

1. That an appeal to the Supreme Court of the United States may issue in this case from the Supreme Court of the State of Tennessee for the correction of the errors so complained of;

2. That citation be granted and signed;

3. That a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Tennessee, may be sent to the Supreme Court of the United States, as provided by law; and

4. That the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment aforesaid of said Supreme Court of Tennessee be reversed.

[fol. 65] Dated this 2nd day of August, 1930.

Interstate Transit, Inc., by J. Carlton Loser, Thos. L. Tallentire, H. Lynne Barber, J. G. Lackey, Attys. for Petitioner and Appellant.

The appeal as prayed for in the foregoing petition is hereby allowed this 2 day of August, A. D. 1930, and a bond therefor is fixed at the sum of $1,000.00.

Dated at Nashville, Tennessee, this 2 day of August, A. D. 1930.

Grafton Green, Chief Justice of the Supreme Court of the State of Tennessee.

[File endorsement omitted.]

[fol. 66] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Aug. 2, 1930

Now comes the petitioner or appellant in the above entitled cause, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal to the Supreme Court of the United States in the above entitled cause, from the decree made by this Honorable Court on the 28th day of June, 1930:

I

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by section 4 of Chapter 89 of the Acts of Tennessee for the year 1927, is a valid and reasonable tax on interstate commerce.

II

That the Supreme Court of Tennessee erred in decreeing that the privilege tax of Five Hundred ($500.00) Dollars per annum per bus engaged exclusively in interstate commerce, by transporting passengers for hire across the State of Tennessee, as levied by Section 4, Chapter 89, Acts of [fol. 67] Tennessee for 1927, is reasonable, and consonant with the Commerce Clause of the Federal Constitution, being Article I, Section 8, Clause 3 thereof.

III

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied on interstate bus operators, by Section 4, Chapter 89, Acts of Tennessee for 1927, is consonant with the Commerce Clause of the Federal Constitution, although the proceeds from said tax go and belong exclusively to the general funds of the state; is fixed in an arbitrary amount, and is the same for busses doing intra and interstate business.

IV

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by Section 4, Chapter 89, Acts of Tennessee for 1927, is valid and constitutional, although said tax is found in a revenue measure, and no part of the proceeds is used for highway maintenance and construction.

V

That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee for year 1927, is a regulatory measure, when the proceeds of said tax go into the general funds of the State and is found in the 1927 Revenue Bill of Tennessee.

VI

That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee for [fol. 68] year 1927, is a reasonable charge on exclusive interstate bus operations as their fair contribution to the cost of constructing and maintaining the public highways, when appellant and all others similarly situated are required, under the laws and statutes of Tennessee, to pay a registration or license fee per vehicle to said state, according to capacity and weight of such vehicle; an excise tax of five (5) cents per gallon on gasoline purchased and used in Tennessee, and an inspection fee of $2.50 per bus seat per annum, the entire proceeds from the three levies being impressed with a trust, being exacted for highway maintenance and construction exclusively, and to cover the cost of inspection of equipment so used. Said three levies are in addition to the tax in question.

Wherefore the appellant prays that said decree be reversed and that said Supreme Court of Tennessee be directed to enter an order reversing its decree and affirming the decision of the trial court in said cause.

J. Carlton Loser, J. G. Lackey, Thos. L. Tallenteri,
H. Lynne Barber, Attys. for Appellant.

[fol. 69] IN SUPREME COURT OF TENNESSEE

[Title omitted]

ORDER ALLOWING APPEAL

Be it Remembered that this case came on to be heard this 2nd day of August, as well as at former days of the term before the Supreme Court of the State of Tennessee, upon petition of appellant, Interstate Transit, Incorporated, for an appeal in the above case to the Supreme Court of the United States, and upon consideration of the premises, the Court is pleased to grant said appeal upon the petitioner, the Interstate Transit, Incorporated, executing bond in the sum of One Thousand Dollars ($1,000.00) conditioned as the law directs.

It is ordered by the Court that the petition for appeal and this decree and such other papers and the record, be certified to the Supreme Court of the United States.

Grafton Green, Chief Justice.

[fols. 70-74] Writ of error omitted in printing.

[fols. 75 & 76] Bond on appeal for $1,000, approved August 2, 1930, omitted in printing.

[fols. 77-81] Citation in usual form, showing service on L. D. Smith et al., omitted in printing.

[fol. 82] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Aug. 22, 1930

The appellant hereby presents the following statement of errors upon which the appellant intends to rely in the

above entitled case, and the parts of the record which the appellant thinks necessary for the consideration thereof.

[fol. 83] Statement of Errors Relied Upon by the Appellant

Now comes the Interstate Transit, Inc., a corporation, organized and existing under the laws of the State of Ohio, the petitioner and appellant, and in connection with its petition for Appeal, shows that in the Record, proceedings, decision and final judgment of the Supreme Court of the State of Tennessee, in the above entitled case, manifest error has intervened to the prejudice of the petitioner and appellant in this, towit:

First. That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by section 4 of Chapter 89 of the Acts of Tennessee for the year 1927, is a valid and reasonable tax on interstate commerce.

Second. That the Supreme Court of Tennessee erred in decreeing that the privilege tax of Five Hundred ($500.00) Dollars per annum per bus engaged exclusively in interstate commerce, by transporting passengers for hire across the State of Tennessee, as levied by Section 4, Chapter 89, Acts of Tennessee for 1927, is reasonable, and consonant with the Commerce Clause of the Federal Constitution, being Article I, Section 8, Clause 3, thereof.

[fol. 84] Third. That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied on interstate bus operators, by Section 4, Chapter 89, Acts of Tennessee for 1927, is consonant with the Commerce Clause of the Federal Constitution, although the proceeds from said tax go and belong exclusively to the general funds of the state; is fixed in an arbitrary amount, and is the same for busses doing intra- and interstate business.

Fourth. That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by Section 4, Chapter 89, Acts of Tennessee for 1927, is valid and constitutional, although said tax is found in a revenue measure, and no part of the proceeds is used for highway maintenance and construction.

Fifth. That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee

for year 1927, is a regulatory measure, when the proceeds of said tax go into the general funds of the State and is found in the 1927 Revenue Bill of Tennessee.

Sixth. That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee for year 1927, is a reasonable charge on exclusive interstate bus operations as their fair contribution to the cost of constructing and maintaining the public highways, when [fol. 85] appellant and all others similarly situated are required, under the laws and statutes of Tennessee, to pay a registration or license fee per vehicle to said state, according to capacity and weight of such vehicle; an excise tax of five (5) cents per gallon on gasoline purchased and used in Tennessee, and an inspection fee of $2.50 per bus seat per annum, the entire proceeds from the three levies being impressed with a trust, being exacted for highway maintenance and construction exclusively, and to cover the cost of inspection of equipment so used. Said three levies are in addition to the tax in question.

Designation of Parts of the Record by Appellant

The appellant also states and avers that it considers the following parts of the Record necessary for the consideration of the errors upon which it intends to rely upon hearing of this case, towit:

1. The original bill of the complainant, or appellant, filed in Part I of the Chancery Court at Nashville, Tennessee.

2. The answer of the appellee to said original bill.

3. The caption and paragraphs 1, 2, 3, 5 and 6, and the signatures of counsel representing the parties of the Stipulation filed in the Chancery Court at Nashville on February 25, 1930.

[fol. 86] 4. The final decree or judgment of the Chancellor in said case.

5. The Assignment of Errors of appellee, Dick Lindsey, filed in the Supreme Court of the State of Tennessee, exclusive of the brief on the law in support thereof.

6. The opinion and judgment of the Supreme Court thereof.

7. The petition for appeal to the United States Supreme Court from the Supreme Court of the State of Tennessee in this case.

8. The Assignment of Errors on said appeal.

9. The Order of the Supreme Court of the State of Tennessee, allowing said appeal.

10. The bond executed herein.

11. The Citation issued herein.

12. The appeal issued herein.

This the 19th day of August, 1930.

J. Carlton Loser, J. G. Lackey, Thos. L. Tallenteri, H. Lynne Barber, Counsel for Appellant.

[fol. 87] To L. D. Smith, Attorney-General for the State of Tennessee; Roy E. Beeler and W. H. Eagle, Assistant Attorneys-General for the State of Tennessee, counsel for the appellee in the above-entitled case:

We herewith serve upon the appellee above named, by delivering to you, a copy of the statement of the errors upon which the appellant in the above entitled case intends to rely and of the parts of the record which the appellant thinks necessary for the consideration thereof.

[fol. 88] Dated this the 19th day of August, 1930.

J. Carlton Loser, J. G. Lackey, Thos. L. Tallenteri, H. Lynne Barber, Counsel for the Appellant.

Service of the foregoing notice this the 20 day of August, 1930, is hereby acknowledged, and service of the statement referred to in said notice is also hereby acknowledged.

L. D. Smith. R. H. Beeler, W. H. Eagle, Counsel for the Appellee.

[fol. 89] [File endorsement omitted.]

[fol. 90] In Supreme Court of the United States

Designation by Appellee of Additional Parts of Record to be Printed—Filed Aug. 25, 1930

Now comes Dick Lindsey, appellee in the above styled cause, and avers that in addition to the portions of the

record designated by appellant, he considers the following additional portion of the record necessary for the consideration of the Court in this case, and therefore designates the same to be included in the transcript of the record herein:

I

The entire stipulation of facts, together with the caption and signature of counsel representing the parties. Said stipulation was filed in the Chancery Court of Davidson County and is partly designated by appellant under sub-
[fol. 91] head III of its designation of the portions of the record desired by it.

This 21st day of August, 1930.

L. D. Smith, Roy H. Beeler, W. H. Eagle, Attorneys for Appellee.

[fol. 92] [File endorsement omitted.]

Endorsed on cover: File No. 35,280. Tennessee Supreme Court. Term No. 358. Interstate Transit, Inc., appellant, vs. Dick Lindsey, County Court Clerk. Filed August 18, 1930. File No. 35,280.